

§ 202.107

complaint or cross-claim against such person, and to have consented to the issuance of a final order in the proceeding, based on all evidence in the record. For this purpose, the evidence in the record may include information contained in a report of investigation made a part of the record pursuant to rule 4(c), § 202.104(c), and evidence received in a hearing, oral or written, held subsequent to the expiration of the time for filing such answer, but shall not be limited to such information and evidence. Such a respondent shall not be entitled to service provided in these rules, of any notice or document except the final order in the proceeding.

§ 202.107 Rule 7: Reply.

(a) *Filing and service.* If the answer asserts a counterclaim or a setoff, the complainant may file a reply in writing within 20 days after service of the answer on such person. If any reply or amended reply is filed, it shall be served on the respondent.

(b) *Contents.* The reply shall be confined strictly to the matters alleged in the counterclaim or setoff asserted in the answer. It shall contain a precise statement of the facts which constitute the grounds of defense to the counterclaim or setoff and shall specifically admit, deny, or explain each of the allegations of the answer constituting such counterclaim or setoff, except that, if the complainant is without knowledge, the reply shall state that.

(c) *Failure to file.* If no reply is filed, the allegations of the answer shall be regarded as denied.

[43 FR 30510, July 14, 1978, as amended at 55 FR 41184, Oct. 10, 1990]

§ 202.108 Rule 8: Docketing of proceeding.

Promptly following receipt of the answer, or the reply (if the answer asserts a counterclaim or a setoff), or following the expiration of the period of time prescribed above for the filing of the answer or of the reply, the agency head shall transmit all of the papers which have been filed in the proceeding (including the investigation report if any has been served on the parties) to the hearing clerk, who shall assign a docket number to the proceeding.

9 CFR Ch. II (1–13 Edition)

Thereafter the proceeding shall be referred to by such number. The hearing clerk shall promptly transmit all such papers to the Office of the General Counsel for assignment of a presiding officer.

§ 202.109 Rule 9: Depositions.

(a) *Application.* Any party may file an application for an order for the taking of testimony by deposition, at any time after docketing of a proceeding and before the close of an oral hearing or the filing of such party's evidence in a written hearing therein. The application shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to in this section as the "officer") before whom the proposed examination is to be made; (3) the reasons why such deposition should be taken, which must show that it may be able to be used as set forth in paragraph (i) of this section; (4) whether the proposed examination is to be on interrogatories or oral; and (5) if oral, a suggested time and place where the proposed deposition is to be made and a suggested manner in which the proposed deposition is to be conducted (telephone, audio-visual telecommunication, or by personal attendance of the individuals who are expected to participate in the deposition). The application for an order for the taking of testimony by deposition shall be made in writing, unless it is made orally on the record at an oral hearing.

(b) *Response; service.* If any such application is made orally on the record at an oral hearing, each party other than the applicant, present at such hearing, may respond to it orally. If any such application is in writing it shall be served on each party other than the applicant, and each such other party shall have not less than 20 days, from the date of service on such party of the application, to file a written response to it.

(c) *Written questions (interrogatories).* (1) If the examination will be oral, parties who will not be present or represented at it may file written questions with the officer prior to the time of the examination.